

PETROLEUM TANK RELEASE COMPENSATION BOARD  
MINUTES  
Business Meeting  
April 2, 2007  
Department of Environmental Quality  
Metcalf Building Room 111, 1520 East 6<sup>th</sup> Avenue  
Helena, MT

Board members in attendance were Theresa Blazicevich, Frank Boucher, Greg Cross, Adele Michels, Steve Michels, and Shaun Peterson. Also in attendance were Terry Wadsworth, Executive Director, and Pam Collins, as Board attorney.

Presiding Officer Cross called the meeting to order at 10:30 a.m.

**Approval of Minutes**

Mr. Wadsworth noted two errors in the minutes of the February 5 meeting. These errors have been corrected. **Ms. Michels moved** to accept the minutes of the February 5, 2007 Board meeting, as corrected. Mr. Michels seconded. **The motion was unanimously approved.**

**Dispute of Eligibility – Johnson’s Conoco, Dutton, Facility #50-04024, Rel. #4507**

This matter involves a release discovered in August 2006, and the failure to empty inactive, out of service USTs. §75-11-308, MCS, says that an owner or operator is eligible for reimbursement only if the release occurred from a tank that was in compliance with state and federal laws and rules that the Board determines pertain to the prevention and mitigation of a petroleum release, at the time the release occurred. In this case, when the tanks were temporarily closed in 1998, each of them still contained product, and they were not permanently closed within 12 months, as required by DEQ. Correspondence was sent to the owner in August and October 2001 concerning the tanks. A violation letter was sent in October 2002. The Enforcement Division contacted the owner in early 2003. The facility was inspected in April 2006, and each of the tanks still contained product, despite being out-of-use for several years. When the tanks were removed in August, 2006, the release was discovered. The staff recommended denial of eligibility to the fund.

Elayne Johnson, personal representative for the estate of her father Gary E. Johnson, addressed the Board to ask for reconsideration of eligibility. The estate concedes that Mr. Johnson was not in compliance. She noted that §75-11-301, MCA states that the purpose of the Board and Fund is to provide adequate financial resources and effective procedures through which tank owners and operators can be reimbursed for corrective action for damage caused by releases from petroleum storage tanks. The estate is in poor condition and the only way she can do what is right for the environment is to obtain eligibility. If eligibility is denied, the property will likely revert to the county. She noted that her father was not the best businessman and often procrastinated. In addition he was in the hospital and quite ill. However, she had no excuses for his failure to remain in compliance.

Mr. Peterson moved to accept the Board staff’s recommendation. He noted that the Board sympathizes with the position Ms. Johnson is in, but noted the eligibility statute requires that the tanks be in compliance, and they were not. Ms. Blazicevich seconded. **The motion was unanimously approved.**

**Eligibility – City Center War Wash, Conrad, Facility #37-13436, Rel. #3293**

This matter involves an eligibility determination related to a release discovered in November 1997, from tanks installed before 1986. Under §75-11-308, the tanks were required to have release detection by the end of 1992. The owner/operator of the two tanks reported them as permanently out of use in 1994. A February, 1997 inspection found product in one of the tanks. The owner/operator was not performing release detection. Because the tank contained product, it was not in compliance with permanent closure requirements in 1994, and release detection was required. DEQ notified the owner/operator that a closure permit application must be received by March 17, 1997. The request for a closure permit was not received until May 23, 1997, 67 days past the deadline. The tanks were emptied and removed from the ground in November 1997, five years after the requirement to have release detection installed. The staff recommended that the release be determined ineligible, due to the failure of the owner/operator to properly operate the tanks, and empty and close them in a timely manner, as required by applicable laws and rules.

Ron Prewitt, consultant representing Jerry Riewer, the owner, noted that the name on the inspection sheet is not legible, and that it is not clear whether the fluid in the tank was all fuel, or if there was groundwater in the tank, with just a skim of fuel on it.

Mr. Riewer addressed the Board. He was not the owner of the site until 1992, when he purchased it from his father. In 1994 he registered the tanks with the DEQ and paid to get the registration current. He stated that he tried to act as quickly as possible, but financing was difficult and the work costly. Montana Salinity has drilled 10 core sample test wells. He asked that the Board help.

Mr. Prewitt asked if Scott Gestring, the PRS case manager, could let them know how bad the site conditions are.

Mr. Gestring indicated that Montana Salinity control did a remedial investigation at the site, taking 10 core samples to find the extent and magnitude of the contamination. He noted that the geology is fine-grained silts and clays with shallow groundwater. It is very slow moving groundwater so the contamination does not migrate rapidly. The site is not a very high priority site.

Presiding Officer Cross indicated that when owners/operators receive a letter from the PRS group, it is similar to receiving a letter from the IRS. It creates a great deal of worry. In addition, the fund is struggling at the moment and the Board is trying to determine, with each site, whether it will be cleaned up immediately or if the owner/operator has some time to work with. He asked what DEQ anticipates on this site.

Mr. Gestring indicated that DEQ can work with the owner/operator to set up a time frame. There are no drinking wells nearby, so on the priority scheme it is not on the high end. However, one of the borings encountered free product.

A discussion was held about why Mr. Riewer kept the tanks registered and permitted if he did not intend to use them.

John Arrigo, acting Hazardous Waste Cleanup Bureau Chief, noted that all tanks in the ground must be permitted. If they are not going to be used, must be either removed within 12 months or placed in inactive status. In order to keep the tanks in inactive status, rather than closing them, upgrades were needed. Mr. Riewer chose to remove the tanks instead.

Ms. Blazicevich moved to accept the Board staff's recommendation, because the tanks were not removed within twelve months. Mr. Boucher seconded. **The motion was unanimously approved.**

#### **Dispute of Claim Adjustments – Grain Growers Oil Co., Glasgow, Facility #53-03160, Rel. #2461**

This matter involves an administrative order, issued August 23, 2006, resolved January 5, 2007, with a penalty of \$300. The administrative order was in effect for 135 days. The violation was failure to conduct release detection monitoring and maintain records. The Board can consider various factors when determining adjustments to reimbursement under ARM 17.58.336, including whether the non-compliance increased the severity of the release or caused increased costs to the fund, the length of time of non-compliance and whether delay in compliance was due to circumstances beyond the control of the owner/operator, and whether there was an error in issuance of the order or the determination of the date the order was satisfied. The staff recommends that claims be adjusted to 25% reimbursement of allowed claims, due to the length of time of non-compliance.

Tanner Trower, General Manager of Grain Growers Co. addressed the Board. He stated that they did everything possible to come into compliance. Grain Growers began correcting the inspection violations in January 2006, as soon as they learned the results of the November 2005 inspection. They began keeping leak detection records in January 2006. The AO was issued in August 2006 and satisfied in January 2007, because that was how long it took to accumulate 12 months of leak detection records. He also indicated that the lack of records was not due to not paying attention or lack of effort. Grain Growers bought the facility in 2001 and put in new pumps in June 2003. The person who was manager at the time elected not to put a new monitoring system in with the new pumps. As a result, there were recurrent difficulties with the monitoring system because the new equipment and the old equipment were not properly integrated. Those problems were corrected. Because of new problems, a new line-leak detector system and new tank monitor were installed in January 2007.

Dan Kenney, Environmental Enforcement Specialist, DEQ, explained the process by which an AO is issued. When a compliance inspection reveals compliance deficiencies, a partial operating permit is issued, which allows the owner/operator to continue operating the violating tank and correct the deficiencies, to bring the facility back into compliance within a specified time frame. Enforcement actions are based on compliance deficiencies noted during a compliance inspection. If other events occur after that inspection, they do not affect the enforcement action. In this case Grain Growers was notified in a warning letter that they were required to correct the deficiencies by the end of February, 2006. Because they did not have the twelve months of records by that time, the matter was sent to enforcement and an AO was issued in August. He reiterated his previous comment, made at an earlier Board meeting, that it is important to consider how well the owner/operator demonstrated good faith in trying to come back into compliance with the AO. There was no release from the tank subject to the AO.

**Ms. Michels moved** to reimburse future claims at 75% of the amount claimed. They only have one tank that was in violation and worked diligently to correct the violation. There was no second. **The motion died.**

**Mr. Peterson moved** to reject the Board staff recommendation and pay all claims at 100%, given the information presented and because the matter has not presented an increased risk to public health, nor has there been any significant additional cost to the fund. Mr. Michels seconded. **The motion was unanimously approved.**

**Dispute of Claim Adjustments – Bob’s Valley Service Inc. (BVSI), Helena, Fac ID #25-07404, Rel. #3449**

This matter involves an Administrative Order on Consent (AOC) agreed to by the parties. The original order was issued on September 15, 2006 and resolved on January 31, 2007, a period of 138 days out of compliance. A penalty of \$1080 was assessed and paid. Among the violations cited in the AOC were: failure to conduct release detection, maintain release detection equipment and maintain release detection records, and failure to empty an inactive or out of service UST. §75-11-309, MCA and ARM 17.58.326 are the applicable statute and rule. The Board staff is recommending reducing reimbursement to 25% of allowed claims.

Mr. Peterson informed the Board that he would abstain from the discussion and vote on this matter, because his company provides insurance to Bob’s Valley Service.

Bernie Hubley, attorney representing the owner/operator, addressed the Board. He asked that the Board bear in mind that the purpose of Montana law is to foster an incentive for owner/operators to take steps to protect the environment. The site is owned by a family corporation, Bob’s Valley Service, Inc. The site was remodeled in 1998 and a red jacket ATG (automatic tank gauging) system was installed. During the following years, several inspections were conducted and the available records were deemed adequate. The facility then received a routine inspection in December 2005, at which time the adequacy of the leak detection records kept by BVSI was challenged. At a re-inspection, conducted in March 2006, the inspector noted that only one month of leak detection monitoring records was available. The AO was issued in September 2006. After discussing the matter with DEQ, it was established that DEQ was interested in line-leak detection, while BVSI was focusing on tank-leak detection. Through a prolonged and expensive process, an Administrative Order on Consent (AOC), issued in November 2006, was negotiated requiring, among other things, the submission of three months of leak detection records. As a result of the disagreement over the leak detection records, BVSI invested a good deal of money to upgrade their line leak detection system. A new, state of the art system was installed by October 31, 2006, prior to issuance of the AOC. He also worked diligently to correct other violations and efficiencies in his system. Three months of acceptable records were submitted on January 31, 2007. It was not possible to satisfy the conditions of the AOC before then, because of the requirement for three months of records. Mr. Hubley feels that the owner/operator has already been punished for his actions; once by a fine and once by the large cost of installing a new system. Reducing the reimbursement percentage would be penalizing BVSI a third time.

Mr. Hubley asked that the Board treat BVSI as it has treated other claimants, such as Stacey Oil, Flying J and Grain Growers, and not penalize him for violations he could not control. Bob’s Valley has put in extraordinary effort to correct any problems at the site. There was no extra cost to the Fund from this matter, and no threat to the public safety, because there was no release to the environment. He asked that the reimbursement percentage be set at 100%.

Mr. Steve Bartmess, President, BVSI. He thanked the Board for listening and providing the opportunity to request full reimbursement. BVSI has owned the site for 35 years, and has tried to stay in compliance throughout that time, and do the right thing. When the site was remodeled in 1998, the contractor discovered two very old tanks and a release. It was quite a cost burden to them. The red jacket system and sumps were installed, and it was his understanding that as long as they took inventories and kept them daily and at the end of the month figured out if they were plus or minus 130 gallons, they were good to go. As well, they had a certificate from DEQ that said the system was up to standards, and the certificate was good for 10 years. Evidently, the line-leak detection was not adequately maintained, but they were keeping the inventory data every day. The records they were keeping turned out not to be what DEQ wanted. He noted that he has tried to do the right thing, and asked that the Board grant 100% reimbursement.

Mr. Michels asked if the old tanks had been removed.

Mr. Bartmess confirmed that they had been removed. He also indicated that the unapproved tank that had been filled inadvertently was manifolded to another, in-use tank. The distributor had a new driver, who filled the wrong tank in error. Unfortunately, when he called Keneco to come remove the product from the unapproved tank, the gentleman was in the hospital and did not come promptly, causing a delay in satisfying that violation.

Mr. Hubley indicated that there is nothing wrong with the unapproved tank. It is not being used because the station does not have enough traffic to warrant filling the tank. Therefore, it is not permitted. It was also pumped out before the original AO was issued.

Mr. Boucher moved to reject the staff's recommendation, and continue payment at 100%, based upon the information presented and the fact that there has been no increased cost and no increased threat to public safety. Ms. Michels seconded. **The motion was approved.** Mr. Peterson abstained.

The Board recessed for 10 minutes, between 12:10 and 12:20 p.m. Mr. Boucher became ill and left the meeting.

Sandi Olsen, Remediation Division Administrator, DEQ, notified the Board that Mike Trombetta, Hazardous Waste Management Bureau Chief has been deployed to Virginia for the next six months. She introduced John Arrigo, who will be acting in Mr. Trombetta's place during his absence.

**Dispute of Claim Adjustment – Nilson Lot, Billings, Claim #20061215E, Facility 60-15052, Rel. 4510**

This matter involves the dispute of a \$17,768.91 adjustment to a claim for \$54,326.08 for excavation and disposal of soils. The adjustments included disallowing \$6,300 in land farm charges that were over and above the actual invoiced cost for the land farming. Markups are not allowed on disposal costs, only for on-site activity. A markup of \$2,292.91 on backfill costs was also disallowed, because markups are not allowed on vendor charges. Those two adjustments total \$8,592.91 in disallowed costs. The remaining reductions relate to the handling and transportation of the soils. The staff's records indicate that reasonable per yard costs for mobilization, separation of the clean overburden, excavation and loading the materials, replacing the overburden and backfilling, and fencing/traffic control are usually approximately \$23 per yard. The charges in the claim for those activities totaled \$31 per yard. The staff believes those charges are not reasonable and are attributable to the actions of the contractor: the inefficient soil handling methods used, using a single truck for transportation, and the charge for equipment and operator while the equipment was idle, so the reimbursable charges were reduced to \$23 per yard, resulting in an adjustment of \$4,700. As well, the soils were transported to a land farm, which was farther away than the Billings Landfill. The disposal costs at the land farm were lower than those charged by the landfill, but the disposal cost savings were negated by the fact that the hauling costs to the land farm were more than double the costs to haul to the landfill. To rectify this situation, the staff reduced the hauling costs by \$7,500, and allowed a \$3,024 credit to compensate for the higher cost of disposal at the landfill. The total of adjustments recommended by the staff is \$17,768.91.

Presiding Officer Cross noted that this is a case where an elderly woman was required to expend funds she really didn't have. Mr. Cross, as a licensed installer/remover, removed the tanks on a pro bono basis. He noted that, as Presiding Officer, he is not currently a voting member of the Board, except in tie situations.

Mr. Peterson asked for an explanation of the Board's method of handling markups.

Mr. Wadsworth stated that the Board's rule, ARM 17.58.342(3)(c), describes markups. A contractor can include a 7% markup in a claim, for subcontractor work on site, with a proof of payment from the subcontractor. The markup allowance was instituted to compensate contractors for the time-value of money. The Board does not pay for markups on delivery or pickup services. He noted that in this matter, the contractor is willing to forgo the markups. They have difficulty with the other adjustments that have been made.

Nancy Klimper, daughter of the property owner/operator, addressed the Board. She provided photographs of the site and a copy of a memorandum from the DEQ case manager explaining actions taken at the site. Mrs. Klimper explained that the tanks had been closed in place by Continental Oil, the previous owner of the property 40 years ago. Despite that fact, DEQ required that the tanks be removed. She was told that if she did not remove them, DEQ would put a lien on her mother's house. Mrs. Klimper attempted to reduce the cost of cleanup by excavating the contaminated soils immediately after tank removal, rather than backfilling the hole, hiring an environmental consultant, developing a work plan and securing three bids before reopening the hole to excavate. She noted that DEQ informed her that the only option for immediate soil disposal was the Yellowstone Soil Treatment Center (land farm), and recommended that the contractor only use one truck to haul the soils, as a safety measure, since the property was too small to allow use of more than one truck without blocking traffic on a major street. The landfill required that each load brought to their facility be tested to determine contamination levels, and that would have significantly delayed the work that needed to be done, so she chose the land farm. In addition, she noted that the photographs show an employee of JTL Group operated the sheep's foot compactor, indicating that JTL was a subcontractor and therefore entitled to a markup. The invoice does not specify that JTL was a subcontractor, but only indicates charges for backfill material. She also told the Board that Yellowstone Soil Treatment Center had quoted a charge of \$40.00 per yard for the landfarm, so the contractor billed her accordingly, but when the Yellowstone Soil Treatment bill came in it was for \$25 per yard.

Mr. Peterson asked if part of the current difficulty is that the work was done without an approved work plan.

Mr. Wadsworth explained that the matter was handled as an emergency response, with Mr. Cross, Mr. Erickson (DEQ case manager) and the excavator on site to determine a course of action. This type of situation is considered a verbal work plan approved by the case manager. The Board staff prefers not to do things that way, because there is no paper trail. It is difficult to determine reasonableness of expenses without a bidding process.

Mr. Peterson asked whether, then, the owner/operator was doing what the Department asked them to do, even if it was not according to the Board's usual process.

Mr. Wadsworth confirmed that was correct.

Mrs. Klimper emphasized that, when told she must remove the tanks, the job was done quickly, and contamination was present. She then discussed her options with Mr. Erickson, and was told she could either remove the contamination at that time, or do it later. Leaving the soils in place was not presented as an option. She now believes that DEQ did not have the legal right to require her to remove the tanks, because they were properly closed in place. The property is very small and is located at the intersection of three major roads. It is within three blocks of the YMCA and Billings High School. There is a fair amount of foot traffic that passes the property each day, which meant that the contractor had to have a safety person on site at all times. The excavation went to the property line, digging out as much contamination as possible, but the contamination has moved off-site, under the roadway. As well, the contractor had asked the city to close one lane to traffic so he could use more than one truck, and his request was denied.

Dave Klimper, Mrs. Klimper's husband, noted that while the land farm was 23 miles away, most of the trip is on highways. The Billings Landfill is only eight miles away, but most of that route is through the city, with lower speed limits and higher risks.

Presiding Officer Cross noted that Mr. Erickson did an excellent job on this site. He worked hard to keep costs down. Mr. Cross wanted to clarify that Mr. Erickson did not demand the use of the Yellowstone Soil Treatment Center. He suggested the landfill or the land farm, but the decision was made to use the land farm because the time needed to make arrangements with the landfill was too long. Mrs. Klimper confirmed that Mr. Erickson had worked hard and she had no complaints about his efforts.

Ms. Olsen stated that DEQ stands behind the decisions Mr. Erickson made and is pleased to hear that others feel he did a good job.

Mr. Peterson noted that reductions and disallowances that are at issue are a result of the Board staff doing their job and being stewards of the Fund. The claimants were following what they understood to be DEQ's orders. If the contractor can provide information to show that there was a subcontractor doing work at the site, can the markup be paid later?

Mr. Wadsworth indicated that later payment could be made in that circumstance. He also said that, since the extra hauling distance was necessary as a result of DEQ recommendation, he would be willing to concede the hauling cost. His major problem is with the two weeks required to excavate 575 cubic yards of soil, when excavation of that amount of soil should take only about half a day. The track hoe sat on site, idle, at a charge of \$135 per hour, and that is not a fair charge.

**Mr. Peterson moved** that the Board pay the adjustments, other than the disallowances for the markups. That means the Board would pay all except the \$6,300 and \$2,292.41 for markups, leaving the total adjustment at \$8592.91, and paying \$9,176. Ms. Michels seconded. Ms. Michels, Mr. Michels, and Mr. Peterson approved. Ms. Blazicevich opposed. **The motion carried three votes to one.**

#### **Eligibility Ratification**

Mr. Wadsworth informed the Board of the eligibility applications before the Board. He noted that the Johnson's Conoco eligibility was addressed earlier in the meeting. In addition, the owner of the Sleeping Buffalo Hot Spring site in Saco has asked that the Board table the matter until the May meeting. There are recommendations for nine sites to be eligible.

**Mr. Peterson moved** to ratify the eligibility determinations contained in the eligibility table. Ms. Blazicevich seconded. **The motion was approved.**

Board Staff Recommendations Pertaining to Eligibility From January 19, 2007 thru March 21, 2007				
Location	Site Name	Facility ID #	DEQ Release # Release Year	Eligibility Determination – Staff Recommendation Date
Kalispell	Former Hardees	15-04860	4334 March 2004	Eligible – 1/29/07
Kalispell	Cardinal True Value	15-12787	1275 July 1992	Eligible – 2/19/07
Dutton	Johnson's Conoco	50-04024	4507 Aug 2006	Ineligible – 2/20/07
Kalispell	Wells Fargo Bank	99-95036	4436 July 2005	Eligible – 2/20/07
Columbus	Platinum Motors	48-04575	4482 March 2006	Eligible – 3/12/07
Chinook	Ezzie's Wholesale Inc	03-07801	2835 Dec 1995	Eligible – 3/5/07
Billings	J & S Pioneer Service	56-04953	4544 Jan 2007	Eligible – 3/12/07
Saco	Sleeping Buffalo Hot Springs	36-06664	4246 5/1/2001	Ineligible – 3/13/07 - POSTPONED
Gallatin Gateway	Buffalo Station	56-14002	4505 8/3/2006	Eligible – 3/21/07
Polson	Former Amoco	60-15070	4542 1/30/07	Eligible – 3/21/07
Billings	Food Service of America	56-06132	4506 12/3/2001	Eligible – 3/21/07

### **Claims over \$25,000**

Mr. Wadsworth presented the Board with the claims for an amount greater than \$25,000 reviewed since the last Board meeting. (See table below). There are four claims totaling \$716,543.24. The claim for the Nilson Lot was addressed earlier in the meeting.

Location	Facility Name	Facility ID#	Claim #	Claimed Amount	Adjustments
Stevensville	Custom Log Homes	4101022	20061010A	\$28,543.15	\$15,230.17
Billings	Nilson Lot	6015052	20061215E	\$54,326.08	\$17,768.91
Whitefish	Stacey Oil Co	15-04428	20070119A	\$533,264.01	\$53,326.40
Denton	Central Montana Coop	14-08178	20070206A	\$100,410.00	\$0.00
<b>Total</b>				<b>\$716,543.24</b>	<b>\$86,325.48</b>

Presiding Officer Cross expressed concern that the Board will have difficulty paying more than \$700,000 in claims over \$25,000, plus the roughly \$90,000 per week that is usually paid in weekly reimbursements. He asked Mr. Wadsworth for options. He asked if it was possible to pay large claims in pieces.

Mr. Wadsworth indicated he believes the Fund must pay them as they are completed and as money becomes available. The claims in the above table have been reviewed and are in the queue to be paid in order.

Presiding Officer Cross noted that it would be nice to know that these large claims are coming at least one Board meeting in advance. The issue is how to get large projects coordinated with the money available in the Fund.

Mr. Wadsworth noted that the staff is working with DEQ to try to prioritize the dig outs so the Fund can keep its balance positive.

Presiding Officer Cross asked Terry to investigate whether the contractor on the very large claim would be willing to have the claim be broken into smaller pieces and paid over several months, so that one claim is not holding up payment of many other claims, if that is legally possible.

Alan Stine addressed the Board. He has done work on the Stacey Oil site and noted that the excavator is a small contractor, who has already had to wait several months for payment of his very large claim.

**Ms. Blazicevich moved** to ratify the claims greater than \$25,000. The motion was seconded. **The motion was unanimously approved.**

Mr. Wadsworth asked Mr. Cross if the Board wishes to change the balance held in the fund. To relieve the backlog of claims currently awaiting payment, he suggested that the Board could reduce the balance in the fund to \$500,000 to pay some of the currently outstanding claims, and replenish the Fund at \$50,000 per month from fee revenue every month until the balance is back up to \$1 Million. Many of the currently outstanding claims will then be paid, including the largest claim of \$533,000.

Mr. Peterson asked to hear from the Department before making any motion.

Sandi Olsen, Remediation Division Administrator, thanked Ms. Blazicevich for indicating Board support for a fee increase. There has been a 62% loss in buying power since the Fund was created. The Department does not want to take the blame any more than does the Board. She noted that the Board has asked the Department to prioritize claims. She reiterated that the Department has control over the work plans, and is more than willing to work with the Board to figure out how to manage those work plans to synch with the funds available. But from a semantics point of view, she does not feel the Department can prioritize claims; that is the Board's jurisdiction. The Department will work with the Board to resolve the claims consideration. As reported previously there are now 265 sites that the Department is officially not working on. They are low priority, and the Department will see what else can be added to the list. At the last meeting there was a discussion of possible ways to prioritize work plans. Since that time, the DEQ staff has come up with 8 possible different ways to prioritize. She has asked the staff to put together the pros and cons of each of the approaches. One method would be to look at how sites score and determine what the cutoff score is. Right now the average score of the sites being addressed is higher than the average score of the sites that are in the pool. Therefore, the Department is working on the higher end sites, with the exception of opportunistic situations such as property transfer sites. Another possibility is to prioritize based on type of site. By whether the site meets the definition of a federal tank facility; it could be based on federal plus state facility designations; or not reimburse on AST sites. They are also evaluating dig outs and have pulled together a list of all the dig outs that are currently proposed and are looking at how to prioritize or stage those dig outs so that they can be completed in a sequence that can be funded as the program moves forward.. The staff is targeting May 1 to have those proposals evaluated. At this point everyone is leaning heavily toward staging the dig outs.

Mr. Peterson stated that the comments heard today indicate that contractors do not want to start work or hire subcontractors when there is no assurance they will be paid in a timely fashion. He asked if there is not some way to prioritize things so that the contractors are not even hiring anyone until the Board can tell them that "we now have the money available for your work plan, go to it," and there is no chance that things will be held up.

Ms. Olsen noted that no one has determined how that could work logistically, but that is what they are attempting to determine. The number of dig outs has escalated, and the size of them covers a wide range. The Department has been working with Board staff to figure out how to stage those sites so that contractors can commit to subcontractors. The Fund has about \$500,000 income per month. She is evaluating the cost of non-dig out claims that come in each month to try to determine how much money might be available each month to allocate to dig outs. Efforts are being made between the Department and Board staff to come up with a plan that is a little more concrete than that effort. She is anticipating at least having a staging plan available for the May Board meeting, as well as evaluation of the pros and cons of all the other options they can use to prioritize.

Presiding Officer Cross addressed the long term monitoring issue. Since wells must be used at least once every 36 months, he asked how many sites might be scheduled for monitoring every 30 months, rather than more often, as currently happens.

Ms. Olsen noted that she has asked Mr. Arrigo, as a special project, to look at whether there is data in the database to identify whether there are sites in long-term monitoring, where they could be reduced to the minimum number of wells necessary, and with the minimum sampling frequency. If such data is not available, she has asked him to begin to develop that data. At a minimum, she will know if such data is available, by the May meeting.

**Mr. Peterson moved** to temporarily decrease the balance in the Fund to \$500,000, and if the Board does not get what it is expecting to get in May with regards to thresholds on prioritization, then all funds coming in from that point forward would replenish the balance to \$1 Million before any further claims are paid.

Dennis Franks, consultant, asked whether the Board understands that if a contractor has an approved work plan that is not worked on for three years, the costs in that plan will rise. When asked why a contractor would submit a work plan when no work will be done for some time, he remarked that DEQ requires plans to be submitted by a certain date.

Ms. Michels stated that the owners should not be penalized because they don't meet DEQ's deadline.

Ms. Olsen indicated that it is not DEQ's intent to put owners in jeopardy. She hopes to come up with a process to work the difficulties out. The consultants must be part of the process, as well. She will find out when the next consultant's meeting can be scheduled. She asked that the Board keep the possibility of a fee increase request on the agenda for the next legislative session. It is not clear at this point whether there will be any support for the idea in 2009, but it should be pursued.

**Mr. Peterson reiterated his motion** to temporarily decrease the balance in the Fund to \$500,000, with the understanding that at the May Board meeting, Board staff and DEQ will have come to a solution that they are both agreeable to that the Board can review and approve. If such a solution is not available, no claims will be paid until the balance of the Fund is again \$1 Million. Ms. Blazicevich seconded. **The motion was unanimously approved.**

### **Weekly Reimbursements**

Mr. Wadsworth presented to the Board for ratification the summary of weekly claim reimbursements for the weeks of January 24, 2007 through March 14, 2007. (See table below). There were 151 claims, totaling \$602,409.95.

**Mr. Peterson moved** to ratify the weekly claim reimbursements. The motion was seconded. **The motion was unanimously approved.**

<b><u>WEEKLY CLAIM REIMBURSEMENTS</u></b> <b>April 2, 2007 BOARD MEETING</b>		
<b><u>Week of</u></b>	<b><u>Number of Claims</u></b>	<b><u>Funds Reimbursed</u></b>
January 24, 2007	37	\$90,662.01
January 31, 2007	34	\$91,078.83
February 7, 2007	14	\$90,230.38
February 28, 2007	9	\$177,678.31
March 7, 2007	28	\$86,080.95
March 14, 2007	29	\$66,679.47
<b>Total</b>	<b>151</b>	<b>\$602,409.95</b>

### **§75-11-307, MCA**

This pertains to an email Mr. Wadsworth received from the Presiding Officer concerning proposed changes to §75-11-307, MCA. The proposed legislation was focused on a housekeeping measure with regard to the 24 hours notification of releases. The legislation is not moving forward, and the matter could be moved to a later meeting. The Presiding Officer agreed that any additional discussion should be held while developing legislation for the 2009 Legislature.

### **Fiscal Report**

Mr. Wadsworth noted that the financial condition of the fund is worse than at the February meeting. The figures in the current report are more accurate than was available at the previous meeting. Claims payments are lagging, due to the volume of claims outpacing the available revenue. He anticipates that there will be a large number of claims that will be accrued at the end of the fiscal year, for the same reason. There are currently \$1.6 Million in claims outstanding. He anticipates there will be roughly the same amount at the end of the fiscal year. He also indicated that the 1997 loan will be paid off in August.

### **Board Attorney Report**

Pam Collins, Board Attorney, presented the attorney report. She stated that Mr. Johnson is negotiating for dismissal of the Allen Oil Bulk Plant case. Town Pump Dillon requested an extension of the time to June 1, 2007 to file their brief



with the Supreme Court. The Court agreed. The Board's reply brief will be due 30 days later. The remaining status is reflected in the table below.

### **Board Staff Report**

Mr. Wadsworth noted that nine eligibility applications have been received in the past three months. All of them are still

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Boulder	Old Texaco Station	22-11481 Release #03138	Eligibility 11/25/97	Dismissal Pending because cleanup of release completed.
Thompson Falls	Feed and Fuel	45-02633 Release #3545	Eligibility	Case was stayed on 10/21/99.
Eureka	Town & Country	27-07148 Release #03642	Eligibility 8/12/99	Hearing postponed as of 11/9/99.
Helena	Allen's Oil Bulk Plant	25-01025 Release #02893	Eligibility 11/29/99	
Butte	Shamrock Motors	47-08592 Release #03650	Eligibility 10/1/99	Case on hold pending notification to Hearing Officer.
Whitefish	Rocky Mountain Transportation	15-01371 Release #03809	Eligibility 9/11/01	Ongoing discovery. No hearing date set.
Lakeside	Lakeside Exxon	15-13487 Release #03955	Eligibility 11/6/01	In discovery stage.
Helena	Noon's #438	25-03918 Release #03980	Eligibility 2/19/02	Case stayed.
Belt	Mary Catherine Castner	07-12039	Eligibility 11/22/02	<b>Stipulation motion for dismissal with prejudice agreed to on 2/20/07</b>
Belt	Main Street Insurance	07-01307 Release #3962		Eligibility tabled 6/25/01 currently Insurance coverage
Dillon	Town Pump #1	01-08695 Release #4144	Eligibility – contested 03/07/05	<b>Supreme Court appellant's brief due April 5, 2007. Respondent's brief due May 7, 2007.</b>
Great Falls	On Your Way	07-09699 Release #3633	Adjustment to future claims	<b>Hearing requested 2/15/07 Awaiting identification of attorney</b>
Lewistown	On Your Way	14-09853 Release #3790	Eligibility contested	<b>Hearing requested 2/15/07 Awaiting identification of attorney</b>
Whitefish	Don Gray	15-04428 Release #1034	Adjustment to future claims	<b>Hearing requested 2/15/07 Awaiting identification of attorney</b>

pending determination. He drew attention to the fact that 151 claims were received in February and 27 claims were paid. The value of claims received in January 2007 was \$1.46 Million, as compared to \$657,000 in January 2005 and \$882,000 in January 2006. As well, the value of corrective action plans reviewed in March 2007 was \$1.02 Million, as compared to \$687,000 in March 2005, and \$633,000 in March 2006. There has been no reduction in the amount of money projected to be spent later on as a result of work plans being requested.

He reminded the Board that the staff has been tracking the average priority of the sites for which work plans are being requested, as well as the number of plans requested and reviewed. There were 58 work plans reviewed in January and February, with an average site priority of 36. This is in line with the average at previous meetings. There has been no significant change in the average priority, despite efforts to move that average to above 50.

The suspended reimbursements table contained two sites that the Board addressed earlier in the meeting; Grain Growers and Bob's Valley Market. The other facilities listed in the table may come before the Board as the Administrative Orders are resolved.

Mr. Peterson asked if the other matters in the table will have suspended or reduced reimbursements, as have the matters the Board has addressed.

Mr. Wadsworth indicated that each facility has a release, and as a result of the AO, future claims will be suspended and subject to adjustment. In that respect they are similar. Most of them will probably deal with the issue of records management. He stressed that it is important for the Board to be consistent in their treatment of such matters, taking into account the specific facts and situation in each case.

He reminded the Board that the terms of three current members will expire on June 30, 2007, Mr. Cross, Mr. Peterson and Mr. Noble. He asked that if any of those members are willing to continue on the Board, they provide him with a letter to that effect that he can present to the Governor's Office.

#### **Petroleum Release Section Report**

John Arrigo, Acting Bureau Chief, Hazardous Waste Bureau, gave the report. He noted that there have been 15 releases identified in 2007 and 13 releases resolved. There have been 20 releases submitted for closure evaluation in 2007.

#### **Public Forum**

There were no comments from the public.

The next scheduled Board meeting is May 21, 2007, in Room 111 of the Metcalf Building, 1520 East 6<sup>th</sup> Avenue, Helena, MT.

Meeting adjourned at 2:31 p.m.

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Greg Cross - Presiding Officer